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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. A-138

PACIFIC MARITIME ASSOCIATION, a California nonprofit corporation and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Petitioners,

vs.

LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

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October 11, 1971

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Petitioners, Pacific Maritime Association (PMA), a California non-profit corporation that acts as the collective bargaining representative of the employers of longshoremen on the West Coast, and the International Longshoremen's and Warehousemen's Union (ILWU), the certified bargaining representative of these longshoremen, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on April 21, 1971.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 441 F.2d 1061, (App. B, 8-21). The decision and order of the district court is reported at 278 F.Supp. 755 (App. B, 22-56). The latter decision incorporates the arbitration award of the Coast Arbitrator under the ILWU-PMA collective bargaining contract dated June 29, 1965 (App. B, 57-63) and the award of the area arbitrator dated February 12, 1965 (App. B, 64-80).

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on April 21, 1971, and a timely petition for rehearing was denied on May 14, 1971. Time to file this petition for certiorari was, on August 3, 1971, duly extended by Mr. Justice Blackmun to October 9, 1971. The time to file this petition was duly extended to October 11, 1971, a legal holiday. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. May a court, by summary judgment after full hearing, confirm an arbitration award for the discharge of a workman under a collective bargaining contract where no substantial evidence is offered to show hostility of any type against the individual discharged and there is no claim of invidious discrimination?

2. May a discharged workman obtain a full-dress trial of his claim that the arbitrator sustained his discharge by erroneously determining the meaning of the collective bargaining contract if his affidavits, in the summary judgment process, make no claim of invidious discrimination and assert only that officials of his union said that he had been violating the contract, that he had thereby given the union

problems in meeting its obligation that there be a good faith observance of the contract by him and all other union members, and that he had a very weak grievance?

3. Is the binding character of an arbitration award sustaining a discharge under a collective bargaining contract vitiated because the union, in processing a number of grievances in arbitration, exchanges a possible contract interpretation claim that arguably has some merit and is of general application, but which is determinative of one employe's pending grievance, in order to get a successful resolution of another contract interpretation issue of much greater importance that affects many employes within the bargaining unit?

4. When a court is asked to confirm an arbitration award discharging a workman on the basis of an interpretation of a collective bargaining contract and is asked by the workman to set aside the arbitration award because the union has allegedly shown "hostility" to him in presenting his discharge grievance, should it grant a summary judgment enforcing the award if the workman fails to show that there has been a contract violation?

STATUTES, FEDERAL COMMON LAW, AND RULE INVOLVED

Section 301 of the Labor-Management Relations Act of 1947, 61 Stat. 156 (29 U.S.C. § 185) reads in pertinent part:

> "Suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States . . .".

The law to govern the courts in their exercise of jurisdiction under § 301 is the federal common law in this area of labor relations, "which the courts must fashion from the policy of our national labor laws". The problems involved will be "solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy".

State law, if compatible with the purpose of § 301, "may be resorted to in order to find the policy that will best effectuate the federal policy". *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 456, 457 (1957); *Dowd Box Co. v. Courtney,* 368 U.S. 502, 514 (1962). The federal law as to the enforcement of arbitration awards in Title 9 of United States Code (App. A, 1-3) and the California Code of Civil Procedure provisions on enforceability of arbitration awards (App. A, 3-4) are among such sources of the federal common law applicable in this case.

Rule 56(b) of the Federal Rules of Civil Procedure (App. A, 6) provides that a party against whom a claim is asserted may move for summary judgment. Rule 56(c) of the Federal Rules of Civil Procedure (App. A, 6) provides that such motion shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law".

STATEMENT OF CASE

This case arises out of a discharge of a longshoreman, Pete Velasquez, from his job as a registered longshoreman under the ILWU-PMA collective bargaining contract covering longshore work in California, Oregon and Washington. The discharge was ordered by the Coast Arbitrator's award of June 29, 1965, at the conclusion of the grievance-arbitration procedure of the contract. In September, 1965, Local 13 of the ILWU brought an action to set aside the arbitration award. Thereafter, a cross complaint to confirm the arbitration award was filed, and the complaint was amended to assert a claim of violation of contract.

Velasquez was a longshoreman in Los Angeles for many years. He was a member of ILWU Local 13, the longshore

local of the ILWU that admits to membership longshoremen working in Los Angeles. He held top seniority status in his job, being a Class A registered longshoreman from July, 1953, until his discharge. From time to time while working as a longshoreman he was given leaves of absence to act as a Local 13 rank and file business agent. Under Local 13's governing rules, only registered longshoremen can hold this job.

The ILWU-PMA collective bargaining contract provides that there shall be no work stoppages during the period of the contract. It further provides:

> "As an explicit condition hereof, the parties are committed to observe this Agreement in good faith. The Union commits the locals and every longshoreman it represents to observe this commitment without resort to gimmicks or subterfuge."

It further provides that any longshoreman shall be discharged "for deliberate repeated offenses" causing the delay of vessels by illegal stoppages of work.

Velasquez committed deliberate offenses of causing the delay of vessels by illegal stoppages of work on February 19, 1959, (App. B, 67) and on September 11, 1960 (App. B, 67), before he was elected business agent in October, 1962. He committed further deliberate offenses, while a business agent, on August 4, 1963 (App. B, 72-73), January 10, 1964 (App. B, 78-79), January 15, 1964 (App. B, 74-75), January 22, 1964 (App. B, 73-74), March 24, 1964 (App. B, 75-76), March 26, 1964 (App. B, 79-80), June 3, 1964 (App. B, 76-77), and July 29, 1964 (App. B, 80). In October, 1964, Velasquez returned to being a working longshoreman.

Many of these work stoppages induced by Velasquez were refusals of longshoremen to work extended shifts, i.e. refusals to work beyond the normal number of hours in a shift in order to complete the loading of a ship so that it

can sail. An affidavit filed in support of Velasquez asserted that in November, 1964, a top level international official of the ILWU (Ward) talked to the president of ILWU Local 13 on the telephone. Ward asked whether the extended shift problem still existed and if Velasquez was in the hair of the Local 13 president. In response to an affirmative answer, Ward told the Local 13 president not to worry and that the ILWU in San Francisco would take care of Velasquez and the extended shifts problem.

Thereafter, Velasquez caused the delay of vessels by illegal stoppages of work on November 23, 1964 (App. B, 70-72) and December 1, 1964 (App. B, 68-69). Early in December the question of his discharge was taken into the grievance machinery at Los Angeles. The international president of the ILWU, Harry Bridges, and the president of PMA were present at one stage of the grievance procedure in Los Angeles.

Arbitration proceedings were held at the area level, with Local 13 representing Velasquez at these proceedings. The area arbitrator held that Velasquez had engaged in deliberate offenses of causing the delay of vessels by illegal stoppages of work on the 12 occasions specified above (App. B, 68-80). Local 13 appealed the award to the Coast Arbitrator. It is admitted that Velasquez was fairly represented with respect to the Area Arbitrator's decision on the factual issues.

After the area arbitrator's award was issued, Harry Bridges, the president of ILWU, had a conversation with Velasquez in the spring of 1965. Local 13 submitted an affidavit stating (R. 202-203) that Bridges said:

> "Velasquez, you might as well get it straight. You're through, you're done. You're all washed up. The only chance you've got is me. If this goes to the Arbitrator,

> Sam Kagel, you're through. I am God damn tired of your bull shit and all of your phony beefs. You better get it straight: You're done, you're through, you're washed up. I am the only one who can save you."

Shortly thereafter the grievance went to Sam Kagel, the Coast Arbitrator, on the appeal of Local 13.

The ILWU handled the hearing before the Coast Arbitrator. The ILWU asserted that the activities on August 4, 1963 and January 22, 1964 (Cases 5 and 6) should not be charged against Velasquez. The Coast Arbitrator held that on at least eight occasions over a period of 17 months Velasquez was guilty of deliberate offenses causing the delay of vessels by illegal work stoppages while a working longshoreman, a shop steward, or a Local 13 rank and file official (App. B, 61).

Local 13 claimed that the actions taken while an official of Local 13 could not be considered in determining whether Velasquez was guilty of "deliberate repeated offenses". The ILWU, however, agreed with the position of the employers that the contract applied to activities of a registered longshoreman while on temporary leave of absence to serve as a rank and file union official. The ILWU argued that discharge was not the proper remedy. The Coast Arbitrator interpreted the contract provision – as to which Local 13 was in disagreement with the International and the PMA – and concluded that the contract provisions prohibiting illegal work stoppages applied to the officers and rank and file business agents of the union (App. B, 62-63). The Coast Arbitrator held (App. B, 63):

> "Velasquez' course of conduct consisted of deliberate repeated offenses in causing illegal work stoppages."

He further found that Velasquez had knowledge that illegal work stoppages were prohibited, that he had persisted in

a course of conduct repeatedly and deliberately causing such work stoppages, and that no excuse was offered (App. B, 62). He held that Velasquez was discharged (App. B, 63). At the same time – on June 29, 1965 – an award was issued in favor of the longshoremen on a "belly-packing of sacks" issue.

The longshore locals of the ILWU met in a caucus in August, 1965. Local 13 submitted a motion that the ILWU reject the award. This motion was voted down (App. B, 51).

After the Coast Arbitrator's award, according to an affidavit filed by Local 13, Bridges told some longshoremen that the Velasquez case was important to only one man and that another issue, as to "belly-packing of sacks", was important to many within the bargaining unit. He is said to have explained that it became necessary for the ILWU to give up a possible argument on the issue that was decisive in the Velasquez grievance in order to win the more important grievance affecting many men within the bargaining unit.

In September, 1965, Local 13 filed a complaint to set aside the award. It made a variety of factual assertions to support its claim that Velasquez was not bound by the arbitration award. It also argued, again, that under the contract a longshoreman's deliberate offenses in causing illegal work stoppages while a rank and file union official could not be considered in determining whether the longshoreman had committed repeated and deliberate offenses in causing illegal work stoppages.

The trial court confirmed the award by a summary judgment under Rule 56(c), F.R.C.P.[1] Its underlying finding

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1. Rule 56(c) provides in part: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

(App. B, 27) was that there was no genuine issue as to any material fact that would establish any cause of action for plaintiff. The finding was entered after full hearing.[2]

The court of appeals reversed. It rejected the finding of the district court, which (at the very least) was not a clearly erroneous finding (cf. Federal Rules of Civil Procedure, Rule 52; App. B, 4). This rejection sets up the basic legal issue presented by this petition. It also held in purported reliance of *Poller v. Columbia Broadcasting System*, 368 U.S. 464 (1962) that, in view of its reading of the record, summary judgment was improper (App. B, 21).

The court of appeals stated that the conversations of November, 1964, and the spring of 1965 could possibly raise an implication of hostility (App. B, 17-20) and held that a full-scale trial would be necessary to determine whether there was "hostility" against Velasquez and to determine whether the interpretation of the relevant contract language was "in itself so unreasonable as to lend support to an inference of bad faith" (Note 10; App. B, 19). It further stated (Note 11; App. B, 19):

> "What we hold is that a union may not agree with an employer, either expressly or tacitly, to exchange a meritorious grievance of an individual employee for some other supposed benefit."

Finally, it asserted that it did not believe that it was appropriate to issue an order confirming an arbitration award "in a suit in which the only controverted issues concern an unsuccessful attempt by a third party to attack the award collaterally" (Note 13; App. B, 21).

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2. The court's record included a jointly approved comprehensive pre-trial order, detailed statements by Local 13 of its factual claims in response to interrogatories and requests for admissions, extensive briefs, and oral argument on several days. Local 13 had "repeated opportunities to state and to expand upon its factual claims both in writing and in oral presentation" (App. B, 27).

REASONS FOR GRANTING WRIT

I

As a result of the collective bargaining process, individual workmen have obtained substantial rights and benefits. They have necessarily given up individual opportunities to get specific benefits beyond the collective bargaining agreement in order to be a beneficiary of the collective bargaining contract that applies to them and all others in the bargaining unit. *J. I. Case v. NLRB*, 321 U.S. 332, 337-338 (1944). Among the normal obligations that employes accept where they work under a collective bargaining contract is the obligation to refrain from strikes and work stoppages and to accept arbitration awards. Observance of the collective bargaining contract by employes, union officials, unions, employers, and employer representatives (like PMA) is necessary if collective bargaining is to work.

II

The decision of the court of appeals, if not reversed, would seriously disrupt the conduct of collective bargaining. A union must use discretion in determining how to proceed in grievances; it must be prepared to proceed vigorously at times; at other times it must dissuade an employe from presenting a grievance if it has little merit or if it will adversely affect the interests of the bargaining unit as a whole.

"In administering the grievance and arbitration machinery as statutory agent of the employees, a union must, in good faith and in a non-arbitrary manner, make decisions as to the merits of particular grievances. See *Humphrey v. Moore*, 375 U.S. 335, 349-350; *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337-339." *Vaca v. Sipes*, 386 U.S. 171, 194 (1967). *Vaca* further states (386 U.S. 195):

> "[A] breach of the duty of fair representation is not established merely by proof that the underlying grievance was meritorious. . . ."

The opinion below is in clear conflict with the principle of these opinions that the federal courts are not going to review arbitration awards, are not going to substitute their judgment for the judgments of arbitrators, and are not going to determine whether grievances are "meritorious", much less determine whether the union's judgment on the exchange of one issue for another issue was good, bad or indifferent.

III

This Court should grant certiorari to establish that the remedies available with respect to discharges are speedy. This Court should define the applicable common law, now, as to motions for summary confirmation of arbitration awards under collective bargaining contracts.[3] That law should not permit full scale trials on flimsy issues. A summary judgment of the district court to confirm the arbitration award on the basis of the record presented is, we urge, the proper remedy under § 301 where an arbitration award has been entered and there seems to be some possibility that it will not be observed by all involved. The labor policy of

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3. The summary processes for the confirmation of arbitration awards should have been applied. California Civil Code provisions (App. A, 3-4) and the United States Code provisions on arbitration awards (App. A, 1-3) would seem to be appropriate guides. They clearly suggest that it is the proper labor policy of the United States to dispose of issues of this type by summary process unless a prima facie case of improper conduct and of contract violation is established. The rules as to the summary judgment procedure in complex antitrust litigation cf. *Poller v. Columbia Broadcasting System*, 368 U.S. 464 (1962) or in civil rights litigation *Adickes v. Kress & Co.*, 398 U.S. 144 (1970) should not apply in determining whether or not an arbitration award is to be enforced or set aside in labor relations affairs.

the United States requires that it be established that such arbitration awards will be promptly observed by all involved. If this not be the law, all of those participating in labor relations need to know what the law is.

The court below erroneously applied a doctrine of summary judgment law that has peculiar application to complex antitrust litigation. Such litigation moves slowly. It is essential in labor relations litigation, in sharp contrast with antitrust litigation, that there be a speedy determination of the issues. The problems of labor relations require that there be compliance by the parties with arbitration awards almost as a matter of rote.

Particularly important is this need for a speedy confirmation of an award where its effect is to prevent work stoppages and to encourage use of the arbitration process as a means of solving disputes.

IV

The decision of the court of appeals will, if not reversed, destroy the basic labor relations policy of the United States that the use of the arbitration process and the observance of a no-strike commitment that goes hand-in-hand with the arbitration process, are fundamental to collective bargaining in our society. The court below has cited the sound principles as to invidious discrimination developed out of *Steele v. Louisville & N.R.R.*, 323 U.S. 192, 209 (1944), but has stretched them far beyond their applicable scope.[4] Thus the opinion below has the effect of washing out the body of law established by this Court in the Steelworker

4. Excerpts from *Humphrey v. Moore*, 375 U.S. 335 (1964) and *Vaca v. Sipes*, 386 U.S. 171 (1967) are quoted but without consideration of the fact that neither case involved an arbitration award or a decision as to contract meaning that was eminently sound and required by the contract language.

trilogy cases[5] holding that the arbitration process is the cornerstone of the federal labor policy as to collective bargaining.

The decision below requires full-dress court trials to review almost any award of an arbitrator in a discharge case. The opinion below permits courts to review such awards where no substantial question is raised as to the representation provided by the union in presenting the case of the discharged employe to the arbitrator and where there is no colorable claim that the contract was violated by the arbitrator's contract interpretation that served as the basis for the decision against a discharged employe. Almost every unhappy litigant in a collective bargaining arbitration will find as much to complain about in the frame of reference of his discharge as has Velasquez. The federal courts cannot review the many arbitration awards that can be attacked on trivial grounds as weighty as those offered here.

Collective bargaining in the United States will not serve its function if the union must make a "federal case" out of every discharge, if it must seek to frustrate the employer's efforts to establish the facts that the union knows to be true, or if it must argue that the contract supports every claim of the person it represents, even when it knows full well that the agreement made with the employer was that a person who did what the grievor did was to be discharged.

V

The Court should clarify the common law in this area of labor relations to state whether an employe must both show a contract violation and a breach of the duty of fair representation if he is to set aside an arbitration award that holds

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5. *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

he has been in violation of the contract. We believe that the law presently is that Velasquez cannot prevail unless he shows that there was a violation of the collective bargaining contract in his discharge. Without such a violation, no cause of action under § 301, 29 U.S.C. § 185, is stated.

It is of major importance to the administration of labor relations, and to the common law of the shop, that all labor unions and employers of organized workers know whether or not arbitrators' awards under their collective bargaining contracts are going to be confirmed by summary judgment unless the disappointed party shows both the "hostility" or "discrimination" necessary to invalidate the normal finality of the arbitration process and also a contract violation.[6]

October 11, 1971

Respectfully submitted

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6. In this case there is no merit in the weak suggestion of the court below that the arbitrator's contract interpretation might not be correct (n. 10, App. B, 19; quoted at 9 supra). The arbitrator considered Local 13's claims as to the contract's meaning and cogently enunciated the basis for his contrary interpretation of the contract (App. B, 62-63). No court should reverse the interpretation concurred in by the PMA, the ILWU top officials, the ILWU body of longshore locals in caucus assembled and the standing arbitrator, a labor relations law professor of national repute with fifteen years experience as arbitrator under this contract.

As the contract interpretation is of general significance and applies to officials of all locals and the International and is objected to by Local 13 because of its current effect on others than Velasquez (R. 413), this general agreement on the contract interpretation is particularly persuasive.